

117145
DECISION



203-74
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

RCM
Westfall

FILE: B-201052

DATE: December 23, 1981

MATTER OF: Department of Defense - Payment of Training
Instructors' Licensing Fees

DIGEST: Prohibition of 5 U.S.C. § 5946 does not apply to payments authorized by 5 U.S.C. § 4109. Payment of licensing fee is necessary expense directly related to training since, without payment of the membership fee, AMETA instructors will not have access to training materials, nor will their trainees be eligible for certification as practitioners.

The General Counsel of the Department of Defense (DOD) has requested an advance decision on whether the Army Management Engineering Training Agency (AMETA) may pay the licensing fees for its Methods Time Measurement (MTM) instructors. For the following reasons, we hold that the payment of licensing expenses is permissible.

According to the submission, MTM is a non-profit corporation which conducts research in human motions and biomechanics, and trains and certifies practitioners and instructors in the use of the techniques which it has developed. MTM classifies its clients as members of the MTM Association, and collects a membership fee from each. Companies which are members of the MTM Association ordinarily have one or more employees who are trained in MTM techniques and licensed by that organization as instructors. Instructors who are certified by MTM are eligible for instructor memberships which allow the various companies to receive training materials for the purpose of conducting in-house MTM training for all levels of personnel. Absent payment of the instructor licensing fee, clients cannot obtain the necessary instructional materials. (The submission indicates that the control of these materials by MTM "stems in part from copyrights and other legally protected interests * * *.") In addition, MTM refuses to certify individuals not trained by licensed instructors. Without such certification, trainees are not eligible to receive updated materials on the most efficient use of MTM techniques.

The General Counsel asks whether the prohibition in 5 U.S.C. § 5946 against paying membership fees in a society or organization for individual Government employees applies to the instructor licensing fees. This section provides:

"Except as authorized by a specific appropriation, by express terms in a general appropriation, or by sections 4109 and 4110 of this title, appropriated funds may not be used for payment of—

"(1) membership fees or dues of an employee
* * * in a society or association * * *."

However, by its terms, the prohibition of 5 U.S.C. § 5946 does not apply to payments authorized by 5 U.S.C. § 4109 (1976). Section 4109 provides:

"(a) The head of an agency, under the regulations prescribed under section 4118(a)(8) of this title and from appropriations or other funds available to the agency, may--

* * * * *

"(2) pay, or reimburse the employee for, all or a part of the necessary expenses of the training, without regard to section 529 of title 31, including among the expenses the necessary costs of--

* * * * *

"(C) tuition and matriculation fees;

* * * * *

"(b) The expenses of training do not include membership fees except to the extent that the fee is a necessary cost directly related to the training itself. * * *"

The submission states:

"* * * Because instructors must first be trained and certified by the MTM Association before they can train others, the licensing fee is directly related to the training of instructors and hence, to the personnel of DoD."

We agree with this rationale and thus conclude that the payment of the fee is "a necessary cost directly related to the training itself" within the contemplation of 5 U.S.C. § 4109(b), supra.

We further note that this is not, in our view, a situation in which the employee could reasonably be expected to have obtained the necessary licensing as a prerequisite to applying for the job. On this ground, we distinguish our previous decisions (e.g. 6 Comp. Gen. 432 (1926); B-171667, March 2, 1971) in which the payment of licensing fees has been denied on the theory that the fees involved were "personal to the employee as an incident to qualifying for the position for which engaged * * *." 6 Comp. Gen. 432 (1926). Furthermore, the individual MTM instructor does not derive any benefit in

terms of increased personal employment marketability from payment of the MTM Association membership fee, since, according to the submission, AMETA is seeking to have its employees licensed as "Class A" instructors who will be restricted to training DOD employees. Thus the instructors will not be able to use their membership in the MTM Association for other than DOD purposes.

For the foregoing reasons, we hold that payment of MTM Association instructor membership fees with AMETA funds is permissible.

Harry R. Chas. Cline
For the Comptroller General
of the United States